

Rules and Regulations

Federal Register

Vol. 69, No. 121

Thursday, June 24, 2004

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1792

RIN 0572-AB74

Seismic Safety

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of confirmation of direct final rule.

SUMMARY: The Rural Utilities Service (RUS), an agency delivering the United States Department of Agriculture's Rural Development Utilities Programs, gives notice that no adverse comments were received regarding the direct final rule amending its regulations to update the seismic safety requirements of the agency, and confirms the effective date of the direct final rule.

DATES: The direct final rule published in the **Federal Register** on April 30, 2004, (69 FR 23641) was effective on June 14, 2004.

FOR FURTHER INFORMATION CONTACT: Mr. Donald Heald, Structural Engineer, Transmission Branch, Electric Staff Division, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 1569, Washington, DC 20250-1569. Telephone: (202) 720-9102. Fax: (202) 720-7491.

SUPPLEMENTARY INFORMATION:

Background

RUS requires borrowers and grant recipients to meet applicable requirements mandated by Federal statutes and regulations to obtain RUS financing. One such requirement is compliance with building safety provisions of the Earthquake Hazards Reduction Act of 1977, as amended (42 U.S.C. 7701 *et seq.*) as implemented pursuant to Executive Order 12699, Seismic Safety of Federal and Federally

Assisted or Regulated New Building Construction (3 CFR, 1990 Comp., pg. 269).

Subpart C of 7 CFR Part 1792 codifies the policies and requirements that RUS and RTB borrowers and grant recipients must meet for new building construction when using funds provided or guaranteed by RUS or RTB, or when obtained through a lien accommodation or subordination approved by RUS or RTB.

The Executive Order requires all Federal agencies to ensure that any new building which is leased for Federal uses or purchased or constructed with Federal assistance is designed and constructed in accordance with appropriate seismic design standards. Those standards must be equivalent to or exceed the seismic safety levels in the National Earthquake Hazards Reduction Program (NEHRP) recommended provisions for the development of seismic regulations for new buildings. The Executive Order charges the Interagency Committee on Seismic Safety in Construction (ICSSC) with recommending appropriate and cost-effective seismic design, construction standards and practices.

According to a recent study commissioned by the ICSSC, the model codes and standards that are equivalent to the 1997 NEHRP Recommended Provisions are the 2000 International Building Code and the ASCE 7-98 Minimum Design Loads for Buildings and Other Structures. These codes will be added to the list of codes equivalent to the 1994 or 1997 NEHRP Recommended Provisions. In addition, clarification is added to the acknowledgment.

Confirmation of Effective Date

This is to confirm the effective date of June 14, 2004, for the direct final rule, 7 CFR 1792, Seismic Safety, published in the **Federal Register** on April 30, 2004.

Dated: June 18, 2004.

Hilda Gay Legg,

Administrator, Rural Utilities Service.

[FR Doc. 04-14323 Filed 6-23-04; 8:45 am]

BILLING CODE 3410-15-P

DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 103

19 CFR Part 24

[CBP Dec. 04-19]

RIN 1651-AA59

Overtime Compensation and Premium Pay for Customs Officers

AGENCY: Department of Homeland Security.

ACTION: Final rule.

SUMMARY: This rule amends the definition of "customs officer" for the purpose of eligibility for overtime compensation and premium pay. In addition, a conforming change is made to the definition of "immigration officer." These revisions are necessary to reflect recent changes in the functions and organizational structure of U.S. Customs and Border Protection consistent with the Homeland Security Act of 2002.

DATES: *Effective Date:* July 24, 2004.

FOR FURTHER INFORMATION CONTACT: Richard Balaban, Financial Analyst, Office of Field Operations, (202) 927-0031.

SUPPLEMENTARY INFORMATION:

Background

Section 24.16 of the Customs Regulations (19 CFR 24.16) sets forth the procedure that U.S. Customs and Border Protection (CBP) must follow to furnish overtime and premium pay to customs officers, as required by the Customs Officer Pay Reform Act, 19 U.S.C. 267 ("COPRA"). The statutory language at 19 U.S.C. 267(e)(1) provides that overtime compensation and premium pay may be paid to an individual performing those functions specified by regulation by the Secretary of the Treasury for a customs inspector or canine enforcement officer. Since the enactment of the Homeland Security Act of 2002 (Pub. L. 107-296, 116 Stat. 2135, 6 U.S.C. 101 *et seq.*), these regulations are now promulgated by the Secretary of Homeland Security.

The enabling regulation, specifically 19 CFR 24.16(b)(7), Customs Regulations, currently defines those eligible for COPRA coverage by specifying only four position

descriptions: "Customs Inspector," "Supervisory Customs Inspector," "Canine Enforcement Officer," and "Supervisory Canine Enforcement Officer." This definition does not encompass the expanded border security and inspection functions brought into CBP by the government reorganization consistent with the Homeland Security Act of 2002. (See Homeland Security Act and the President's Reorganization Plan of November 25, 2002, as amended by the President's January 30, 2003 modification.)

When CBP was established on March 1, 2003, it brought together some 18,000 inspection personnel from different agencies and disciplines at the nation's ports of entry, with the priority mission of preventing terrorists and terrorist weapons from entering the United States. At present, three different overtime and premium pay systems are required to administer overtime compensation and premium pay for inspection personnel.

Proposal

On April 7, 2004, CBP published a document in the **Federal Register** (69 FR 18296) proposing to amend the definition of "customs officer" for the purpose of eligibility for overtime compensation and premium pay. If this proposed regulatory change to the definition of "customs officer" in 19 CFR and a conforming change to the definition of "immigration officer" in 8 CFR is adopted, the Department of Homeland Security (DHS) would make COPRA (the current overtime and premium pay system for customs officers) the overtime and premium pay system for the other inspectors working in CBP, in effect creating a single overtime and premium pay system instead of the three different systems that are now in place. This change would eliminate the inequities and disparities in pay and scheduling under the three different systems.

A new position, Customs and Border Protection Officer (CBP Officer), was recently established to merge the expanded border and inspection functions formerly performed within three separate agencies: The former Immigration and Naturalization Service of the Department of Justice, the former United States Customs Service of the Department of the Treasury, and the Animal and Plant Health Inspection Service of the Department of Agriculture. The CBP Officer is the principal front line officer carrying out the priority mission and the traditional customs, immigration and some agriculture inspection functions which

are now the responsibility of CBP. The establishment of the new position enables the agency to perform its mission more efficiently and to provide better protection and service to the public at the ports of entry. In addition, CBP established the CBP Agriculture Specialist position with responsibilities for agriculture inspection of passengers and cargo as well as analysis of agriculture imports. In order to assure that these officers meet their responsibilities to the public, they are required to be available for overtime as a condition of employment.

To enable CBP to furnish overtime compensation and premium pay for these new positions, it proposed to include "Customs and Border Protection Officer" and related positions within the definition of "customs officer" in 19 CFR 24.16(b)(7). It is noted that the continued usage of the term "customs officer" does not reflect any reorganization within DHS. Rather, it occurs because it reflects the pertinent statutory authority, 19 U.S.C. 267, regarding overtime compensation and premium pay. Including the "Customs and Border Protection Officer" within the definition of "customs officer" in 19 CFR 24.16(b)(7) does not affect the authority of a "Customs and Border Protection Officer" to engage in customs, immigration, and agriculture inspection functions. Instead, it is a key step to implementing the "one face at the border" initiative by harmonizing the pay systems for the personnel who perform those functions.

Furthermore, CBP proposed to include a technical change in 8 CFR 103.1 to authorize a customs officer, as defined in 19 CFR 24.16(b)(7), to perform immigration inspection functions, without a separate designation. Currently, customs officers perform such immigration functions pursuant to a designation as an immigration officer.

Finally, it is important to note that CBP's proposed rule was tangentially related but separate and distinct from the proposed rule published on February 20, 2004 in the **Federal Register** by DHS and the Office of Personnel Management regarding the establishment of a new human capital system for DHS. The two proposed rules addressed different human resources issues. The proposed rule regarding COPRA expands the eligibility of certain employees to receive overtime compensation and premium pay under 19 U.S.C. 267; however, it has no impact on setting any employee's basic rate of pay. The human capital rule, on the other hand, proposes to create a new system for setting basic pay within DHS.

Discussion of Comments

CBP solicited written comments on its proposal regarding overtime compensation and premium pay. It received a total of 8 comments in response to the April 7, 2004 notice of proposed rulemaking. What follows is a review of and CBP's response to the issues and questions that were presented by the comments concerning the proposed regulations.

Five of eight respondents were specifically in favor of the consolidation and offered suggestions and clarifications on the proposal. The remaining three comments, though not negative, offered suggestions for further improvements to the implementation of this change. None of the commenters were opposed to the conversion into COPRA; however, they raised questions regarding the implementation of the conversion. To facilitate the conversion, CBP plans to post further guidance on its internet page (<http://www.cbp.gov>) upon publication of this final rule.

Comment: Several commenters suggested that Agriculture Technicians should also be covered by COPRA based on the nature of the work that they perform.

CBP Response: The "one face at the border" concept addressed the work and pay of the legacy Customs Inspector, the Immigration Inspector and the Agriculture Inspector occupations. Similar to the inspectional occupations, there are three legacy technician occupations. A review of the work performed by these employees is planned. After the review is complete, a determination will be made as to whether overtime changes are necessary. In the interim, Agriculture Technicians will continue to receive overtime compensation as they have in the past.

Comment: Some CBP Agriculture Specialists (formerly Agriculture Inspectors) commented that, while they were generally in favor of being included under COPRA, they did not appreciate that commuting time would be limited to one hour (paid at three times the hourly rate). They felt that, due to the specialized nature of their work, they would be required to incur longer commutes than CBP Officers.

CBP Response: The rules for commuting time compensation under COPRA are set forth in 19 CFR 24.16(e)(3). COPRA provides an employee three hours of base pay for an overtime assignment involving a commute regardless of the length of time needed for the commute. CBP believes that this provision is fair and administratively efficient. Furthermore,

the majority of commuting instances for CBP Officers and CBP Agriculture Specialists fall within the three-hour timeframe.

Comment: A commenter inquired as to the effective date for the COPRA conversion.

CBP Response: The effective date of the regulation will be 30 days after publication of this final rule in the **Federal Register**. Employees will be covered thereafter at the earliest date practicable dependent on administrative contingencies. In the interest of fairness and equity, the change will be implemented for all CBP Officers and CBP Agriculture Specialists at the same time. This implementation is an important step for the agency to move forward in unifying the workforce.

Comment: One commenter was concerned that the COPRA overtime cap would be applied, in mid-year, to the affected employees. Further, concern was expressed about the \$25,000 limit on overtime earnings under COPRA which is lower than the \$30,000 cap that currently applies to CBP employees.

CBP Response: For those converting to COPRA during the current fiscal year, the COPRA overtime cap will only be applicable for the remainder of the fiscal year. Overtime earned by CBP Agriculture Specialists and Immigration Inspectors prior to conversion to COPRA is limited to the CBP \$30,000 cap. The \$25,000 cap under COPRA is an annual cap but it will only apply to earnings during the period between conversion to COPRA and the end of the fiscal year (approximately three months). Therefore, it is not expected that individual overtime earnings will be impacted.

The \$25,000 limit on overtime and premiums under COPRA is established by statute. In prior years, specific appropriations language increased this limit to \$30,000. Action is underway to reestablish the COPRA limit at \$30,000.

Comment: Two commenters asked about the effect of the annuity provisions of COPRA and whether these provisions could be applied retroactively to past overtime earnings under a different pay system.

CBP Response: As originally noted in the Notice of Proposed Rulemaking, COPRA provides up to one half of the statutory cap in calculating retirement pay. However, this provision is applicable only to COPRA earnings. Earnings under other overtime systems would be creditable toward an annuity only if those systems also included such a provision. Consequently, employees moving to COPRA will be unable to "grandfather" in previous overtime

earnings toward retirement if their former system did not provide for such credit.

Comment: Two comments expressed concern about Senior Immigration Inspectors (SRI) receiving only COPRA pay in lieu of Administratively Uncontrollable Overtime (AUO). One of these comments spoke specifically to the perceived similarities between the Border Patrol Agent and SRI positions, both of whom currently earn AUO.

CBP Response: After a review of the requirements of the SRI position, it was determined that the nature of the work falls within the duties defined for the CBP Officer occupation. (It should be noted that although Border Patrol Agents and SRIs currently receive AUO, the two occupations have different functions and operate in different environments. SRIs work at ports of entry and handle inspections as well as specialized enforcement functions. Border Patrol Agents operate between the ports and focus on interdicting, tracking, deterring, and apprehending illegal immigrants.) The work performed by SRIs will continue in CBP Officers whose position description includes specialized law enforcement responsibilities as well as inspection duties. Just as the CBP Officer occupation will also include officers who specialize in training (CBP Officer, Training), or handling canines (CBP Officer, K-9), the specialized functions currently performed by the SRIs will be performed by a CBP Officer with the requisite specialized skills. Due to the exclusive nature of COPRA (employees covered by COPRA are not eligible for other forms of overtime) and the amount of inspectional work required within the duties of this position, all work beyond the normal work day will be paid through the provisions of COPRA. It should be noted that of the entire inspectional workforce in CBP (over 18,000), approximately 250 are SRIs. Only about half of these SRIs earn AUO, with the others earning other forms of inspectional overtime.

Adoption of Proposal as Final Rule

In view of the foregoing, following careful consideration of the comments received and upon further review of the matter, CBP has concluded that the proposed regulations should be adopted as a final rule.

Executive Order 12866

This rule is considered by DHS to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this rule has been submitted to the Office of Management

and Budget (OMB) for review. DHS assessed the impacts of this rulemaking and its alternatives, as presented in the April 7, 2004 notice of proposed rulemaking. CBP did not receive contradictory information pertaining to the preliminary regulatory impact analysis published with the proposed rule. Accordingly, CBP is restating those findings in final form below.

Impact on User Fees

At present, three user fees, supplemented by appropriations, fund the three different overtime pay systems that, in turn, govern the three traditional inspection disciplines. CBP will assure that there will be no impact on fees or service levels. CBP will track and account by activity how the fees are spent to ensure the proper transfer of immigration and agriculture funds to reimburse the Customs User Fee Account to cover costs incurred for immigration and agriculture overtime services. CBP plans to use the Cost Management Information System (CMIS) to track expenses by activity. CMIS is an activity-based cost accounting system that has been audited and endorsed by the General Accounting Office. Employees use established activity codes to track their time through the Customs Time and Attendance System. Fee payers that are currently providing the traditional user fee funding for customs, immigration and agriculture inspection services will continue to pay and benefit as they have in the past.

Impact on Employees

As noted, when CBP was established on March 1, 2003, it brought together inspection personnel from three different agencies (Agriculture, Immigration and Naturalization Service, and Customs). Inspectors in each of these workforces earn overtime and premium pay based on three different statutes. In order to establish "one face at the border," CBP is creating a new frontline officer corps to unify and integrate the inspectional work of these three legacy agencies. The unified occupations require a single compensation system. Today, while the officers are still classified in the three legacy occupations, they are paid under three sets of overtime rules, which has resulted in disparate earnings for virtually the same work. In addition, the three separate occupations and overtime rules have created significant administrative inefficiencies, as well as work assignment and payroll problems. The impact of this rule on the inspectional workforce is that officers who perform the same functions at the

ports of entry will be paid overtime and premium pay under the same computational rules.

This rule does not address the number of overtime hours the officers will be required to work, which varies by individual, by port, and by other factors such as workload fluctuations, staffing levels at a particular location, and changes to the national threat alert level. Instead, this rule adds currently classified immigration and agriculture officers (approximately 8,000 inspectors) to the COPRA system, and thus affects their rates of overtime and premium pay for actual hours worked. (Over 10,000 inspectors, all former Customs Service, are already covered by COPRA.)

The impact of this rule will be that, for some work schedules, certain employees will earn more, while for other work schedules, they will earn less. For example, current agriculture inspectors who work overtime on a weekday will earn "double time" under COPRA instead of "time-and-a-half" under their current system. On the other hand, these same inspectors may earn less under COPRA than under their current system for work on a Sunday. The chart below provides additional examples of how the three overtime systems differ when comparing hours worked. On the whole, the impact of this rule on the overall earnings for the

same or similar number of hours worked is expected to be minimal. While some features of COPRA are less generous than those of other systems, there are compensating features that are more generous. Thus, the differences between COPRA and the other systems balance out in terms of earnings for hours worked. However, it is noted that this rule affects only one aspect of overtime and premium pay earnings of employees. Other factors, such as the total number of hours worked and when the overtime is worked, impact the aggregate earnings of officers on an annual basis. The explanation provided herein, both in text and in the accompanying Table, represent a good faith effort to explain the potential impact of this rule on the employees. However, due to the complexities of the different systems and the differing work schedules of individual inspectors, the exact impact of the proposed rule on a specific employee is speculative and incapable of exact computation. The difficulty of comparing these systems was highlighted in the November 2001 GAO Report titled *Customs and INS—Comparison of Officer's Pay* (GAO-02-21). The GAO Report compared two of these systems and concluded that "straightforward and generalizable comparisons in relation to these pay provisions are infeasible."

CBP does not anticipate that the amendment will have an impact on private entities because the changes pertain to the agency's internal operating procedures and because overtime compensation will be funded with existing user fees the expenditure of which will be subject to normal accounting within the government. However, DHS has determined this action is a "significant" regulatory action within the meaning of Executive Order 12866 because it may be perceived to relate to the revisions of the Federal employment system DHS is presently considering under the Homeland Security Act. This rule is separate from those revisions, which do not address overtime compensation.

Similarities and Differences Between COPRA and Other Overtime Systems

There are a number of similarities and differences between COPRA and the overtime systems under which legacy immigration and agriculture inspectors have been covered.

The following chart compares the major provisions of the three systems. The chart contains a high-level overview of the practices established by legacy agencies in their implementation of their overtime systems. It is not intended to contain all the details relevant to determining the rate of pay in specific situations.

TABLE.—GENERAL COMPARISON OF OVERTIME SYSTEMS

Pay provision/term	Customs inspectors	Immigration inspectors	Agriculture inspectors
Basic pay	General Schedule pay with locality pay adjustment based on geographic area.	Same as Customs	Same as Customs.
Basic hourly rate	General Schedule hourly rate with locality pay included.	Same as Customs	Same as Customs.
Basic workweek	7-day	6-day (Monday–Saturday)	6-day (Monday–Saturday).
Basic overtime	Compensation in addition to basic pay for work in excess of the 40-hour regularly scheduled work week or work in excess of 8 hours in a day. Overtime pay is 2 times the basic hourly rate—a 100-percent premium (COPRA).	Compensation in addition to basic pay for work in excess of the 40-hour regularly scheduled work-week. Applies to inspection overtime hours worked between 5:00 p.m. and 8:00 a.m., Monday–Saturday and anytime on Sunday or a holiday. Overtime pay is 4 hours pay for each additional 2 hours or fraction thereof (1931 Act).	Compensation in addition to basic pay for work in excess of the 40-hour week or work in excess of 8 hours in a day. Overtime pay is 1.5 times the basic hourly rate not to exceed a GS-10.1 pay for overtime Monday through Saturday (Title 5).
Other overtime	Not applicable	Compensation in addition to basic pay for (1) overtime inspection work between 8:00 a.m. and 5:00 p.m. Monday–Saturday and (2) non-inspection overtime outside these hours. Overtime is paid at 1.5 times the basic hourly rate (50-percent premium.) Maximum rate is based on salary for GS-10, step 1—the 1945 Act, FEPA).	Not applicable.

TABLE.—GENERAL COMPARISON OF OVERTIME SYSTEMS—Continued

Pay provision/term	Customs inspectors	Immigration inspectors	Agriculture inspectors
Premium pay	Overall term referring to extra compensation or "premium" paid for work performed on Sunday, holiday, or at night. (The term does not cover overtime pay.).	In addition to Sunday, holiday, and night pay, INS includes overtime in its definition of premium pay.	Overtime term referring to extra compensation or "premium" paid for work performed on holiday or at night. (The term does not cover overtime pay.)
Sunday pay	Premium paid in addition to basic hourly rate for Sunday work. Sunday pay is 1.5 times the basic hourly rate (50-percent premium). Sunday can be a regularly scheduled workday. Officers are paid for actual hours worked.	Compensation for Sunday work. Sunday pay is 2-days' pay for 8 or fewer hours worked. Sunday is not a regularly scheduled workday. Sunday work is scheduled in addition to the regular workweek and is always staffed with overtime. Immigration inspectors are paid based on minimum periods of time worked.	Compensation for Sunday work. Sunday pay is 2 times the hourly rate for actual hours worked. Sunday is not a regularly scheduled workday. Sunday work is scheduled in addition to the regular workweek and is always staffed with overtime.
Holiday pay	Premium paid in addition to basic hourly rate for work on a holiday. Holiday pay is 2 times the basic hourly rate (100-percent premium).	Premium paid in addition to basic hourly rate for work on a holiday. Two days' pay for 8 or fewer hours worked (Mon.–Sat.), in addition to basic pay.	Premium paid in addition to basic hourly rate for work on a holiday. Holiday pay is 2 times the basic hourly (100-percent premium).
Night pay (night differential)	Premium paid in addition to basic hourly rate for night work. Night differential pay rates differ based on the time or shift hours worked. Officers paid 1.15 or 1.2 times the basic hourly rate (15- or 20-percent differential). "Majority of hours" provision applies depending on actual hours worked.	Premium paid in addition to basic hourly rate for night work. Officers are paid 10-percent premium or "differential" for hours worked between 6 p.m. and 6 a.m.	Same as Immigration.
Night pay on leave	Customs inspectors are paid night differential for work assigned on night shifts when they are on annual, sick, or other leave.	Immigration inspectors are paid limited night differential (if less than 8 hours per pay period) for work assigned to night shifts when they are on leave. INS does not pay night differential to officers on vacation (extended annual leave).	Same as Immigration.
Commute Compensation	Compensation for returning to work (commute) to perform an overtime work assignment. Commute compensation is 3 times the basic hourly rate.	Not authorized	Compensation for returning to work (commute) to perform an overtime work perform an assignment. Commute compensation is based on local rates. It is generally between 1 to 3 times the basic hourly rate.
Callback	Additional overtime paid for reporting early or returning to work for unscheduled inspections. Callback is 2 times the basic hourly rate.	See rollback	Additional overtime paid for returning to work for unscheduled inspections. Callback is 2 times the basic hourly rate for Sundays but capped at GS–10.1 pay for overtime work between Monday and Saturday.
Rollback	See callback	Additional overtime paid for reporting early or returning to work for unscheduled inspections. Rollback is 2-hours' additional pay at basic overtime rate.	See callback.
Foreign language proficiency Award.	Premium paid for proficiency and use of foreign language while performing inspection duties. Foreign language award is between 3 and 5 percent of basic pay.	Not authorized	Not authorized.
Retirement annuity (overtime earnings included).	Customs includes overtime earnings (up to ½ the Statutory Cap) in calculating retirement pay.	Not authorized	Not authorized.
Alternate work schedule	Regularly scheduled work during a pay period based on a 9- or 10-hour workday totaling 80 hours per pay period (every 2 weeks)..	Same as Customs	Same as Customs.

Increased Efficiency

The adoption of a single overtime system in lieu of the three overtime systems now in place provides greater efficiencies in scheduling, monitoring and tracking overtime. Thus, CBP anticipates no net costs from this regulation, either to the public at large or to user fee payers interested in maintaining levels of services and facilitation. In fact, CBP anticipates savings both to the government and to the public as the systems for paying officers for overtime and clearing goods and passengers are made more effective and efficient.

Alternatives Considered

A key objective in establishing DHS was to unify border security functions at the nation's ports of entry. In DHS, the three separate agencies whose employees previously worked side by side at these ports of entry are now united. They are unified not only in the same organization, with the same management chain of command—they are also united around a common priority mission. In addition, these employees, with appropriate cross-training, will merge to perform the traditional missions that came together at the ports of entry from the legacy agencies of U.S. Customs, the Immigration and Naturalization Service, and the Animal and Plant Health Inspection Service. Thus, a well-trained and well-integrated workforce serves as a “force multiplier” in carrying out both the priority mission and the traditional missions of CBP. However, in order to integrate the workforce, a common overtime and premium pay system is required.

In order to implement the new frontline positions of CBP Officer and CBP Agriculture Specialist, it is necessary and appropriate to have the incumbents of these positions work under the same overtime system. That is, it is not feasible to pay incumbents of the same position under different overtime systems. Notwithstanding the feasibility, it is also not fair to employees to pay them differently when they are working side by side, performing the same type of work. Thus, the alternative of maintaining three overtime systems was not considered viable under the Secretary's “one face at the border” initiative.

CBP undertook a review of available options for the overtime system and selected COPRA as the best available compensation system for the new positions because of the advantages it offers management, employees, and the traveling public. It is the most modern

of the three systems, implemented only 10 years ago; in contrast, the statutes governing the other legacy systems were each enacted over 50 years ago, before the exponential growth of international trade and travel. COPRA more closely aligns pay to actual work performed, enabling the agency to more efficiently manage overtime. It establishes a 7-day workweek under which Sunday is not considered an overtime day, thereby providing greater flexibility in managing work assignments since officers can be regularly scheduled for any day of the week based on operational needs. Further, it is not statutorily permissible to use the overtime systems governing the immigration (1931 Act) and agriculture (Pub. L. 107–171) inspectors to cover all inspectional activities performed by these new unified officer positions.

CBP considered, but rejected, the option of converting all inspectors to a totally new overtime and premium pay system. In order to do so, CBP would have needed to seek authorizing legislation. As a result, it is not certain whether, or when, appropriate legislation would have been enacted. This option would have involved unacceptable delays in the implementation of the “one face at the border” initiative.

For the employee, COPRA offers better premium pay rates than the other systems for employees who work night shifts (as outlined in the comparison chart above). Another significant advantage over the other systems is that COPRA provides a retirement benefit. Under the statute, up to 50% of the statutory cap (Pub. L. 103–66) on overtime earnings is credited as base pay for retirement purposes, yielding a higher annuity that is more aligned with the officer's annual earnings. COPRA also authorizes payment of a foreign language proficiency award (up to 5% of base pay) to officers who maintain and use their language skills as part of their job duties.

Regulatory Flexibility Act

DHS has determined that, as this rule applies only internally to CBP employees, it will not have a significant economic impact on a substantial number of small entities, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates

These regulations will not result in the expenditure by State, local, or tribal governments of more than \$100 million annually. Thus, no written assessment of unfunded mandates is required.

E.O. 13132, Federalism

DHS has determined these regulations will not have Federalism implications because they will apply only to Federal agencies and employees. The regulations will not have financial or other effects on States, the relationship between the Federal Government and the States, or the distribution of power and responsibilities among the various levels of government.

E.O. 12988, Civil Justice Reform

This proposed rule is consistent with the requirements of E.O. 12988. Among other things, the regulation would not preempt, repeal or modify any federal statute; provides clear standards; has no retroactive effects; defines key terms; and is drafted clearly.

Paperwork Reduction Act

The regulations do not involve any information collection from any member of the public.

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Immigration, Reporting and recordkeeping requirements.

19 CFR Part 24

Accounting, Customs duties and inspection, Financial and accounting procedures, User fees, Wages.

Amendments to the Regulations

■ For the reasons stated above, chapter I of Title 8 and chapter I of Title 19 of the Code of Federal Regulations are amended as set forth below.

TITLE 8, CHAPTER I

PART 103—POWERS AND DUTIES; AVAILABILITY OF RECORDS

■ 1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552A; 8 U.S.C. 1101, 1103, 1304, 1356; 31 U.S.C. 9701; Public Law 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*); E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

* * * * *

■ 2. In § 103.1, paragraph (a) is republished and paragraph (b) is amended by adding a sentence at the end to read as follows:

§ 103.1 Delegations of authority; designation of immigration officers.

(a) *Delegations of authority.* Delegations of authority to perform functions and exercise authorities under

the immigration laws may be made by the Secretary of Homeland Security as provided by § 2.1 of this chapter.

(b) *Immigration Officer.* * * * Any customs officer, as defined in 19 CFR 24.16, is hereby authorized to exercise the powers and duties of an immigration officer as specified by the Act and this chapter.

TITLE 19, CHAPTER I

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

■ 3. The general authority citation for part 24 is revised and the specific authority citation for § 24.16 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58a–58c, 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States) 1505, 1520, 1624; 26 U.S.C. 4461, 4462; 31 U.S.C. 9701; Public Law 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*).

* * * * *

Section § 24.16 also issued under 19 U.S.C. 261, 267, 1450, 1451, 1452, 1623; 46 U.S.C. 2111, 2112;

* * * * *

■ 4. In § 24.16, paragraph (b)(7) is revised to read as follows:

§ 24.16 Overtime services; overtime compensation and premium pay for Customs Officers; rate of compensation.

* * * * *

(b) * * *

(7) *Customs Officer* means only those individuals assigned to position descriptions entitled “Customs Inspector,” “Supervisory Customs Inspector,” “Canine Enforcement Officer,” “Supervisory Canine Enforcement Officer,” “Customs and Border Protection Officer,” “Supervisory Customs and Border Protection Officer,” “Customs and Border Protection Agriculture Specialist,” or “Supervisory Customs

and Border Protection Agriculture Specialist.”

Robert C. Bonner,

Commissioner, Customs and Border Protection.

Tom Ridge,

Secretary, Department of Homeland Security.

[FR Doc. 04–14415 Filed 6–23–04; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–17–AD; Amendment 39–13662; AD 2004–12–03]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB SF340A and SAAB 340B Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Saab Model SAAB SF340A and SAAB 340B series airplanes, that requires inspection of the main landing gear’s (MLG) separation bolt harness, corrective actions if necessary, and replacement of the MLG’s separation bolt harness. For certain airplanes, this AD also requires modification of the MLG separation bolt’s electrical harness. This action is necessary to prevent failure of the MLG to extend during use of the emergency backup system. This action is intended to address the identified unsafe condition.

DATES: Effective July 29, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 29, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be

examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Saab Model SAAB SF340A and SAAB 340B series airplanes was published in the **Federal Register** on April 1, 2004 (69 FR 17077). That action proposed to require inspection of the main landing gear’s (MLG) separation bolt harness, corrective actions if necessary, and replacement of the MLG’s separation bolt harness. For certain airplanes, that action also proposed to require modification of the MLG separation bolt’s electrical harness.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA’s determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 224 airplanes of U.S. registry will be affected by this AD. The following table shows the estimated cost impact for airplanes affected by this AD. The average labor rate is \$65 per work hour.

For certain model—	Action—	Number of airplanes affected—	Work hours—	Parts cost—	Total cost—
SAAB SF340A and SAAB 340B series airplanes.	Inspection of the harnesses	224	4	(none)	\$58,240, or \$260 per airplane.
SAAB SF340A and SAAB 340B series airplanes.	Replacement of the harnesses ...	224	12	\$2,100	\$645,120, or \$2,880 per airplane.